IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 672 OF 2007

M/s. Mayur Manufacturing Company .....Petitioner.

V/s

Hari Bans Kanojia .....Respondent.

Mr. H.H. Madon with Mrs. S.J. Nagasri for the Petitioner.

Mr. Rajesh Gehani for the Respondent.

CORAM: V.M. KANADE, J.

DATE : 9th April, 2007

P.C.:

1. Rule.

2. Rule is made returnable forthwith by the consent of the parties. Respondent waives service.

3. Heard the learned Counsel appearing on behalf of the Petitioner and the learned Counsel appearing on behalf of the Respondent.

4. The petitioner takes exception to the order passed by the Presiding Officer, 10th Labour Court at Mumbai whereby the Labour

Court allowed the reference and directed the Petitioner - Company to pay an amount of Rs 2,00,000/- to the Respondent towards compensation. The Respondent raised a dispute alleging that his services were illegally terminated by the Petitioner and the dispute was referred to the Labour Court for adjudication. In the statement of claim which was filed by the Respondent, he alleged that his services were terminated with effect from 10/09/1996. The written statement was filed by the Petitioner - Company and an affidavit was filed by both parties in lieu of their evidence. The Reference Court, on the basis of the evidence which was adduced by both the parties, came to the conclusion that the services of the Respondent were terminated on 08/08/1996 and the Petitioner - Company was directed to pay an amount of Rs 2,00,000/- to the workman instead of reinstatement.

5. The learned Counsel appearing on behalf of the Petitioner has invited my attention to the finding which is given by the Reference Court on the date of termination. He submits that in the statement of claim and the affidavit which is filed by the workman, he has stated that the date of termination is 10/09/1996. However, the Labour Court has given a finding that his services were terminated on 08/08/1996. He submits that it is a well settled position in law that

the Labour Court cannot go beyond the terms of reference. He further submits that the Labour Court also has not given any finding on the date of superannuation of the workman. He submits that it was essential for the Labour Court to first give a finding regarding the date of superannuation of the Respondent and only thereafter it could have given a finding on the aspect of compensation which was payable to the Respondent. He submits that, in any event, the finding of the Labour Court was perverse inasmuch as there was no question of directing the Company to pay compensation to the Respondent.

6. The learned Counsel appearing on behalf of the Respondent, on the other hand, submits that since the relief which was granted by the Labour Court was not from 10/09/1996, merely because a finding was recorded by the Labour Court that the services of the Respondent were terminated on 08/08/1996, no irregularity was committed by the Labour Court. He, however, candidly and fairly stated that no finding has been given by the Labour Court regarding the date of superannuation of the Respondent.

7. In my view, it is an admitted position that the Tribunal has not applied its mind on the date of superannuation of the Respondent. It

is the case of the Petitioner - Company that the Respondent is 68 years of age whereas it is the case of the Respondent that he was 57 years old when his services were terminated. In view of these disputed facts, the Labour Court ought to have recorded a finding on the date of superannuation in view of the conflicting claims which are made by the parties. In the absence of proper date of superannuation, the Tribunal could not have, on ad-hoc basis, arrived at the compensation payable to the workman. In my view, therefore, this is a fit case where the order passed by the Labour Court should be set aside and the matter should be remanded to the Trial Court.

8. Accordingly, the impugned order passed by the Labour Court is set aside and the matter is remanded to the Labour Court. The Labour Court shall permit both the parties to lead evidence regarding the age of the workman. The Labour Court shall thereafter decide the matter afresh and in accordance with law. All contentions of both the parties are kept open. The Labour Court shall decide the matter as expeditiously as possible and, in any case, within a period of six months. Rule is made absolute accordingly.

(V. M. KANADE, J.)